

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

W.P.No. 2305 of 2015

DATE: 06.02.2015

Between:

K. Madhavi and 47 others

.. Petitioners

and

1. The State of A.P.
2. District Collector
3. The Revenue Divisional Officer
4. Tahsildar

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Respondents

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ORDER:-

The petitioners, who are 48 in number, claim to have occupied small extents of government poramboke lands in Sy.No.44-1, situated in Edulagunta village, Appalayagunta Revenue, Srikalahasti Mandal, Chittoor District in 1987-1988 and since then they have been in possession of those lands by erecting huts, brick sheds and roof sheds. While so, it is stated that the 4th respondent-Tahsildar issued them individual notices dated 27.12.2014 under Section 7 of the A.P. Land Encroachment Act, 1905 (for brevity "the Act") indicating that they should handover their lands with their existing structures and crops to the Government. Then, the petitioners submitted a common explanation dated 30.01.2015 stating that the lands in question are not covered under tank bed area and the same are not being cultivated under ayacut of the alleged tank bed and claimed to regularise their possession as the same is tank poramboke. It is also stated that similarly situated occupants of abutting land which was claimed as tank bed by the Government, were issued possession certificates. Now, the petitioners, grievance is that the 4th respondent, without considering their representation and without making any enquiry as to the existence or otherwise of the alleged tank bed with reference to the revenue records, is taking steps to dispossess the petitioners from the lands in question. Hence, the present writ petition is filed seeking appropriate directions

and to set aside the impugned Notices.

The learned counsel for the petitioners has contended that the action of the 4th respondent in trying to dispossess the petitioners from the schedule lands is against the relevant statutory provisions of the Act. He has further submitted that mere issuance of notice under Section 7 of the Act does not empower the respondents to evict the petitioners, and prays to set aside the impugned notices while directing the respondents not to take coercive steps to dispossess the petitioners from the lands in question.

The learned Government Pleader for Revenue appearing for the respondents has submitted that the lands in issue are tank bed lands and in view of the orders passed by the Apex Court in respect of such nature of lands, a duty is cast on the government to restore the tank bed lands by evicting the encroachers, as such, the very question of consideration of the claim of the writ petitioners on the ground raised by them that the lands are not covered under tank bed area does not arise and the writ petition is liable to be dismissed.

The law amply mandates that a prior notice under Section 7 of the Act calling for the explanation / objections of the encroachers as to why they cannot be evicted, shall be issued. The authorities shall consider the objections that may be submitted by them, and if the authorities are not satisfied with those objections, they shall pass appropriate orders indicating to that effect and issue notice under Section 6 of the Act requiring the encroachers to vacate the land within such reasonable time as may be fixed. In case, the encroachers have failed to comply with the terms of notice under Section 6

of the Act, then the authorities are at liberty to resort to eviction proceedings.

Having considered the rival submissions and having regard to the fact that the respondents have not passed any orders on the common representation dated 30.01.2015 considering their objections and also no statutory notice under Section 6 of the Act was issued dealing with those objections, this Court, without going into the merits of the case, is inclined to dispose of the writ petition with the following directions:

“The respondents are directed to issue notices under Section 6 of the Act to the petitioners only after considering the common representation / objections dated 30.01.2015 said to have been submitted by the petitioners and passing appropriate speaking orders thereon and then take action in accordance therewith. It is needless to mention that mere issuance of notice under Section 6 of the Act cannot be termed as consideration of the objections raised by the petitioners. Till such time as the petitioners’ objections are considered and final reasoned orders are passed, the petitioners shall not be evicted/dispossessed from the lands in question.”

With the above direction, the writ petition is disposed of.

No order as to costs.

As a sequel to the disposal of the writ petition, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

CHALLA KODANDA RAM, J

06.02.2015

bcj